HARDY MYERS
ATTORNEY GENERAL

PETER D. SHEPHERD
DEPUTY ATTORNEY GENERAL



DEPARTMENT OF JUSTICE

1162 Court Street NE
Justice Building
Salem, Oregon 97301-4096
Telephone: (503) 378-4400
TTY: (503) 378-5938

September 4, 2002

William Gene Vehlewald
SID #11063994
Oregon State Penitentiary
2605 State St.
Salem, OR 97310

Re: *Petition for Public Records Disclosure Order:*
John Kitzhaber, M.D., Governor

Dear Mr. Vehlewald:

This letter is the Attorney General's order on your request for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. Your request, which we received on September 3, 2002, asks the Attorney General to direct the Governor's Office and its employees to make available for inspection the following records:

> Any and all records received and created by the Oregon Governor with reference to the application of clemency by WILLIAM GENE VEHLEWALD. Also, any and all records received by the governor from the department of public safety with reference to Mr. Vehlewald's clemency application.

For the reasons that follow, we respectfully deny your petition.

While your petition states that you requested the records identified above on July 20 and again on August 9 without receiving a response, the Governor's Deputy Legal Counsel, Sean O'Day, told us that the Governor's Office responded to your request by a letter dated September 3. The Governor's response granted your request in part and denied it in part.

Under the Oregon Public Records Law, the Attorney General reviews petitions of persons who allege they have been denied access to any public record of a state agency. ORS 192.450. However, the Attorney General's jurisdiction in this area is limited by ORS 192.480, which provides in relevant part:

> In any case in which a person is denied the right to inspect or to receive a copy of a public record in the custody of an elected official, or in the custody of any other

> person but as to which an elected official claims the right to withhold disclosure, no petition to require disclosure may be filed with the Attorney General or district attorney, or if a petition is filed it shall not be considered by the Attorney General or district attorney after a claim of right to withhold disclosure by an elected official. In such case, a person denied the right to receive or inspect a copy of a public record may institute proceedings for injunctive or declaratory relief in the appropriate circuit court, as specified in ORS 192.450 or 192.460 * * *.

Governor Kitzhaber is an elected official. Accordingly, to the extent that the Governor has denied your records request, this office has no authority to consider your petition; your remedy would be to institute proceedings for injunctive or declaratory relief in the circuit court. ORS 192.480. We therefore respectfully deny your petition for lack of jurisdiction

Accordingly, we deny your petition.

Sincerely,

Peter D. Shepherd

PETER D. SHEPHERD
Deputy Attorney General

AGS10942
c: Sean O'Day, Governor's Deputy Legal Counsel